



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

# DRAFT

Date Amended:	05/24/11	Bill No:	<a href="#">Assembly Bill 289</a>
Tax Program:	Sales and Use Tax	Author:	Cedillo
Sponsor:	Author	Code Sections:	RTC 6363.3
Related Bills:		Effective Date:	Upon enactment

## BILL SUMMARY

This bill would extend until January 1, 2019, the sales and use tax exemption for sales of used clothing, household items, or other retail items by thrift stores operated for purposes of raising funds to provide medical, hospice, or social services for individuals with HIV or AIDS, which is due to sunset on January 1, 2012.

### Summary of Amendments

Since the previous analysis, this bill was amended to put in a seven-year sunset date of January 1, 2019. The prior version of the bill would have extended the exemption indefinitely.

## ANALYSIS

### CURRENT LAW

Under existing law, the sales tax or the use tax applies to the sale or use of tangible personal property (including second hand property) in this state, unless specifically exempted by law. Under existing law, Revenue and Taxation Code Section 6363.3, as added by AB 3187 (Stats. 1996, Ch. 781, Martinez), provides a sales and use tax exemption for sales of used clothing, household items, and other retail items sold by thrift stores operated by a nonprofit organization. To qualify, the purpose of the thrift store must be to obtain revenue for the funding of medical, hospice, and social services to individuals with HIV disease or AIDS, and at least 75 percent of the net income derived from operations of the thrift store must actually be expended for that purpose. In addition, the thrift store must be a nonprofit organization exempt from state income tax under Revenue and Taxation Code Section 23701d.

In 2001, AB 180 (Ch. 383, Stats. 2001, Cedillo) amended Section 6363.3 to extend the January 1, 2002 sunset date to January 1, 2007. That section was amended again in 2006 by SB 1341 (Ch. 373, Stats. 2006, Cedillo), which extended the January 1, 2007 sunset date to the current January 1, 2012.

Current law also provides an exemption for sales by other charitable organizations that relieve poverty and distress. Under Section 6375, sales (including thrift store sales) by charitable organizations are exempt from sales and use tax under the following conditions:

1. The organization must be formed and operated for charitable purposes and must qualify for the "welfare exemption" from property taxation provided by Revenue and Taxation Code Section 214.
2. The organization must be engaged in the relief of poverty and distress.

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3. The organization's sales or donations must be made principally as a matter of assistance to purchasers or donees in distressed financial condition.
4. The property sold or donated must have been made, prepared, and assembled or manufactured by the organization.

The welfare exemption referred to in condition (1) is available to property owned and operated by a charitable organization under certain conditions. Among the conditions is the requirement that the property be used in the actual operation of a charitable activity. Property used merely to raise funds is not used in a charitable activity even though the funds will be devoted to a charitable purpose. To qualify for the welfare exemption, a thrift store must, among other things, conduct a rehabilitation program recognized by the California Department of Rehabilitation or operate under a city or county rehabilitation program. It must also sell goods processed in some manner by people who are being rehabilitated through the program and are employed in the operation of the store.

Merchandise sold through thrift stores operated by Goodwill Industries, the Salvation Army, and St. Vincent de Paul, for example, qualify for the exemption under Section 6375.

#### PROPOSED LAW

This bill would amend Section 6363.3 to extend from January 1, 2012 to January 1, 2019, the sunset date on the exemption for sales of used clothing, household items, or other retail items by thrift stores operated by a nonprofit organization, if the purpose of the thrift store is to obtain revenue for the funding of medical, hospice, or social services to individuals with HIV or AIDS.

The bill would take effect immediately as a tax levy.

#### COMMENTS

1. **Sponsor and Purpose.** The author is sponsoring this bill in an effort to make permanent the existing exemption for sales by thrift stores operated that benefit individuals with HIV or AIDS .
2. **The proposed amendments** provide a seven-year sunset date of January 1, 2019, for the existing sales and use tax exemption. The introduced version of the bill would have made this exemption permanent.
3. **Provisions would not be problematic to administer.** Since the BOE is already administering the sales and use tax exemption for thrift stores that benefit individuals with HIV or AIDS, eliminating the sunset date would not pose a problem.
4. **Related legislation.** At the January 27, 2011 BOE Legislative Committee meeting, the committee voted to sponsor legislation to extend the sunset date on the sales and use tax exemption for thrift stores that benefit individuals with HIV or AIDS, from January 1, 2012 to January 1, 2017.

**COST ESTIMATE**

The BOE would incur some minimal, absorbable costs to notify affected retailers and revise applicable publications.

**REVENUE ESTIMATE****BACKGROUND, METHODOLOGY, AND ASSUMPTIONS**

Currently, there are three nonprofit organizations operating thrift stores that qualify for this exemption and for which the BOE has issued letters of eligibility. These organizations hold seller's permits, file tax returns, and claim exempt sales pursuant to Section 6363.3.

Based on returns filed by the qualified organizations for the calendar year 2009, claimed exempt sales for these organizations under Section 6363.3 totaled \$12.5 million.

**REVENUE SUMMARY**

Exempting \$12.5 million from the sales and use tax would result in the following annual revenue loss:

	<u>Revenue Effect</u>
State General Fund (5.0%)	\$ 625,000
State Fiscal Recovery Fund (0.25%)	31,300
Local Revenue Fund (0.50%)	62,500
Local Public Safety Fund (0.50%)	62,500
Bradley-Burns Uniform Local Tax (0.50%)	125,000
District Tax (0.86%)	<u>107,500</u>
Total Revenue Loss	<u><u>\$ 1,013,800</u></u>

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